



The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

February 7, 2005

D.T.E. 04-115-A

Procurement of Default Service Power Supply for Residential and Small Commercial and Industrial Customers.

I. INTRODUCTION

On December 6, 2004, the Department of Telecommunications and Energy (“Department”) issued a request seeking comments on how our current default service procurement policies could be modified to ensure that the benefits of the competitive market accrue to all Massachusetts ratepayers. Default Service Procurement, D.T.E. 04-115 (2004).¹ As part of this request, the Department noted that the statutory term “default service” has confused some customers because of its unintended suggestion of nonfeasance in performing a legal or contractual obligation. Id. at 6, citing G.L. c. 164, § 1. To alleviate this confusion, the Department requested comments on whether a better or more descriptive term should be used in place of “default service” by the distribution companies after the end of seven-year standard offer service transition period.

¹ Initial comments were filed by the Attorney General of the Commonwealth of Massachusetts (“Attorney General”); Calpine Corporation (“Calpine”); Cape Light Compact; Constellation Energy (“Constellation”); Direct Energy Services, LLC (“Direct Energy”); Division of Energy Resources (“DOER”); Dominion Retail (“Dominion”); Duke Energy North America, LLC (“Duke”); Fitchburg Gas and Electric Light Company (“Fitchburg”); Massachusetts Electric Company and Nantucket Electric Company (together, “MECo”); Mirant Corporation (“Mirant”); Morgan Stanley Capital Group, Inc. (“Morgan Stanley”); National Energy Marketers Association (“NEMA”); NSTAR Electric Company (“NSTAR”); Power Brokers; Select Energy, Inc. (“Select”); Strategic Energy LLC (“Strategic”); Union of Concerned Scientists, Massachusetts Energy Consumers Alliance, Massachusetts Public Interest Research Group, Clean Water Action, and Conservation Law Foundation (together, “UCS”); Utility Workers Union of America - Local 369 (“UWUA”); and Western Massachusetts Electric Company (“WMECo”).

Reply comments were filed by Cape Light Compact; Direct Energy; EnXco, Inc.; Massachusetts Community Action Program Directors’ Association, Inc. (“MASSCAP”); MECo; NSTAR; UCS; UPC Wind Management, LLC (“UPC”); and WPS Energy Services, Inc.

As discussed below, most commenters addressed the issue of an alternative term for default service. In addition, on January 10, 2005, Associated Industries of Massachusetts (“AIM”), the Attorney General, DOER, Fitchburg, MECo, Mirant, MxEnergy, Inc. (“MxEnergy”), Select, and The Energy Consortium (“Energy Consortium”) filed a joint request to authorize the immediate use of the term “basic service” by the distribution companies in communications with customers to refer to default service (“Joint Request”). On January 13, 2005, NSTAR also requested that the Department authorize the use of the term “basic service” for customer communications on an expedited basis to allow customer bills using the term to be printed during early February 2005 for use in billing cycles on and after March 1, 2005 (“NSTAR Request”).²

II. SUMMARY OF COMMENTS

Many commenters agree that the term “default service” has been confusing for some customers because it suggests that they may have defaulted on an obligation to their distribution company (Attorney General Comments at 8, DOER Comments at 16, Dominion Comments at 8, Fitchburg Comments at 6, Joint Request at 1, MECo Comments at 14, NSTAR Comments at 28, NSTAR Request at 1, UWUA Comments at 8, WMECo Comments at 16). In addition, certain commenters contend that the term “default service” is misleading because it implies that there are other service options available which, they argue, is not yet accurate for all customers (Joint Request at 1). To decrease customer confusion and to better

² This Order addresses only the request to use of the term “basic service” to refer to default service. Other procurement-related issues raised in D.T.E. 04-115 will be addressed separately.

describe the service that is being provided by the distribution companies, AIM, the Attorney General, DOER, Energy Consortium, MASSCAP, Mirant, Morgan Stanley, MxEnergy, NSTAR, Fitchburg, Select, UWUA, and WMECo suggest that the Department adopt the term “basic service” in place of “default service” (Attorney General Comments at 8, DOER Comments at 16, Joint Request at 1, MASSCAP Reply Comments at 28, Mirant Comments at 9, Morgan Stanley Comments at 8, NSTAR Comments at 28, NSTAR Reply Comments at 16-17, NSTAR Request at 1, Fitchburg Comments at 6, Select Comments at 7, UWUA Comments at 8, WMECo Comments at 17).

Other commenters contend that the term “default service” is neither inaccurate nor misleading. These commenters argue that the term “default service” accurately describes the process by which customers, in the absence of choosing a competitive supplier, are placed on distribution company-provided supply service by default (Constellation Comments at 7-8, Direct Energy Comments at 17, Select Comments at 9). Constellation and Select argue that if the Department does choose an alternative term, the term should better define the nature of the service and not imply that the service is either less expensive, safer, or better than competitive offerings (Constellation Comments at 7-8, Select Comments at 9). Constellation takes issue with the use of “basic service,” arguing that it would likely inhibit migration to competitive supply because the term “basic” implies that the service is less expensive than service from a competitive supplier (Constellation Comments at 8). Cape Light Compact also argues that the term “basic service” is not neutral and would be misleading and anticompetitive (Cape Light Compact Reply Comments at 3).

Instead of “basic service,” Cape Light Compact, Constellation, NEMA, and Select suggest that the Department should consider using the term “last resort service” as appropriately descriptive of the service provided by the distribution companies (Cape Light Compact Comments at 7, Constellation Comments at 8, NEMA Comments at 4, Select Comments at 9).³ For similar reasons, Calpine suggests that the Department use the term “backstop service” in place of “default service” (Calpine Comments at 8).⁴

III. ANALYSIS AND FINDINGS

Although the term “default service” is defined by statute, nothing in the Restructuring Act or the Department’s regulations require the use of a specific name for the type of generation service provided by the distribution companies. See G.L. c. 164, §§ 1, 1B(d); 220 C.M.R. § 11.00 et seq. As we noted in our request for comments, the term “default service” has confused some customers because of its unintended suggestion of nonfeasance. D.T.E. 04-115, at 6. Numerous commenters agree that the term “default service” has had negative connotations for customers (Attorney General Comments at 8, DOER Comments at 16, Dominion Comments at 8, Fitchburg Comments at 6, Joint Request at 1, MECo

³ The term “provider of last resort” is also suggested as an alternative by DOER, Dominion, and Power Brokers (DOER Comments at 16, Dominion Comments at 8, Power Brokers Comments at 5-6).

⁴ Other alternative terms offered include “noncompetitive service” and “interim service” by Cape Light Compact, “generation service” by DOER, “standard energy service” by Morgan Stanley, and “current market power option” and “common service” by Power Brokers (Cape Light Compact Comments at 7, Cape Light Compact Reply Comments at 4, DOER Comments at 16, Morgan Stanley Comments at 8, Power Brokers Comments at 5-6).

Comments at 14, NSTAR Comments at 28, NSTAR Request at 1, UWUA Comments at 8, WMECo Comments at 16). As the standard offer service transition period comes to a close, we find that it is appropriate to allow distribution companies to change the name “default service” in customer communications in order to minimize customer confusion and to clarify the nature of the service being provided through the distribution companies’ default service tariffs.⁵ We agree that any alternative name should appropriately define the nature of the service being provided by the distribution companies and should not imply that the service is in some way better or less expensive than that provided by competitive suppliers (see e.g., Constellation Comments at 7-8, Select Comments at 9).

There is broad support for using the term “basic service” in place of “default service” (see Attorney General Comments at 8, DOER Comments at 16, Joint Request at 1, MASSCAP Reply Comments at 28, Mirant Comments at 9, Morgan Stanley Comments at 8, NSTAR Comments at 28, NSTAR Reply Comments at 16-17, NSTAR Request at 1, Fitchburg Comments at 6, Select Comments at 7, UWUA Comments at 8, WMECo Comments at 17). The Department does not agree with the assertions of some commenters that the term “basic service” is misleading or that it implies that the service is less expensive than service from a competitive supplier (see Constellation Comments at 8, Cape Light Compact Reply Comments at 3). Instead, we find that the term “basic service” appropriately defines the nature of the

⁵ This Order only addresses the use of the name “basic service” to refer to default service in the context of distribution companies’ customer communications. The Department will separately address the appropriateness of a wholesale substitution of the term “basic service” for default service.

service being provided by the distribution companies without being confusing, misleading, or anticompetitive.⁶ As the Department stated in Provision of Default Service, D.T.E. 02-40-B at 7 (2003), at least for larger customers, “default service should function as a *basic service* that provides customers with the appropriate incentives to turn to the competitive market for more sophisticated or advantageous service offerings” (emphasis added).

The Department directs each distribution company to refer to the service provided by it on or after March 1, 2005, to a customer who is not receiving generation service from a competitive supplier as “basic service.” The use of the term “basic service” is approved immediately so as to allow it to be used in conjunction with consumer education efforts occurring before the end of the standard offer service transition period.

⁶ By contrast, we find that the term “last resort service” has the potential to cause some customer confusion, at least in the near term when there are not significant competitive options available to the majority of residential and small commercial and industrial customers.

VI. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: Effective immediately, Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, Fitchburg Gas and Electric Light Company, Massachusetts Electric Company, Nantucket Electric Company, and Western Massachusetts Electric Company shall refer in all customer communications to the service provided on or after March 1, 2005, to a customer who is not receiving generation service from a competitive supplier as “basic service.”

By Order of the Department,

/s/

Paul G. Afonso, Chairman

/s/

James Connelly, Commissioner

/s/

W. Robert Keating, Commissioner

/s/

Judith F. Judson, Commissioner

/s/

Brian Paul Golden, Commissioner